

APPLICANTS:
Herbert C. Hasselbarth, Jr. and
Carol A. Hasselbarth

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

REQUEST: A variance to permit
a carport within the required side yard
setback in the R2 District

HEARING DATE: May 24, 2006

Case No. 5533

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Herbert C. Hasselbarth, Jr.

CO-APPLICANT: Carol A. Hasselbarth

LOCATION: 611 Ponderosa Drive – Fox Bow Development, Bel Air
Tax Map: 49 / Grid: 4A / Parcel: 812 / Lot: 138
Third (3rd) Election District

ZONING: R2 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-36(B), Table V, of the Harford County Code, to permit a carport to maintain minimum side yard of 5 feet, with a total of 15 feet (required minimum 10 foot setback, total 30 foot required) in the R2 District.

TESTIMONY AND EVIDENCE OF RECORD:

Herbert C. Hasselbarth, Jr. testified that the subject property, owned by he and his wife, is approximately 13,000 square feet in size, located in the Fox Bow subdivision of Harford County, and is improved by a brick and frame one-story dwelling.

The Applicants seek to construct a carport to the side of their home, which is improved by an existing blacktop driveway from Ponderosa Drive. Construction of a carport would reduce the required side yard setback from a minimum of 10 feet to 5 feet, and would also reduce the required total side yard setbacks of 30 feet to 15 feet. Accordingly, the Applicants request these variances.

The Applicant read, and presented into the record, a three page statement, marked as Applicants' Exhibit "1".

Case No. 5533 – Herbert & Carol Hasselbarth

The Applicants have lived at the subject property for 27 years, and were original owners. The carport which they wish to construct would be attached to the house, and supported on the opposite side by two brick columns. It would be open on three sides. It will measure 40 feet by 15 feet.

The reason for the carport, according to the Applicant, is to alleviate a water drainage and “settlement pattern which is peculiar or unique to our property. The water drainage and settlement pattern is creating dampness problems for us in the basement of our home.”

The statement explained why a drainage problem exists on the subject property. The Applicants summarized the drainage problem as water flowing through their property, close to the house, much of which accumulates and is directed to the subject property from adjoining properties. As a consequence of the water flowing through their property, close to the house, water settles around the foundation of the Applicants’ house. This results in dampness in the basement.

The Applicants also introduced photographs showing how dampness has discolored the house foundation on the affected side.

The Applicants also stated that the construction of the carport would provide a shield from rain, and would redirect roof water from the area as well, significantly reducing moisture around the foundation. Additionally, a carport will allow air to circulate on that side of the house.

The Applicants also state that they plan “. . . on blacktopping the area between our house and the driveway which will prevent water from settling next to the house. Again, this will reduce the amount of moisture in the ground around our foundation.”

The Applicants suggest that the requested variance would have no adverse impact on the neighbors or neighborhood. Statements were introduced, signed by the neighbors, which indicate the neighbors’ lack of opposition to the request.

The Applicants also referenced, and relied upon in their presentation, the Decision in Board of Appeals Case No. 4010, which concerns 609 Ponderosa Drive, the next-door neighbor to the Applicants. That case, as recited by the Applicants, granted approval to the neighbor, 16 years ago, for a variance to construct a carport to help alleviate a similar water problem. The Hearing Examiner relied upon the adjoining lot’s narrowness, wetness problem in the basement, and above average radon reading. The Applicants suggest that their property and the conditions they experience are similar, if not identical, to that of the neighbor who received that favorable variance decision.

The Applicants suggest it would be unfair to deny their request for a variance when a similar one was granted to their next-door neighbor.

Case No. 5533 – Herbert & Carol Hasselbarth

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that the property is similar to others in the neighborhood. Numerous properties exist in the area of the same size and with the same features as that of the Applicants. Mr. McClune also believes that another method could be used to control the drainage ponding problem expressed by the Applicants. Accordingly, no variance is necessary and the Department of Planning and Zoning recommends denial.

There were no witnesses or evidence presented in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Case No. 5533 – Herbert & Carol Hasselbarth

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Preliminarily, the Decision in Board of Appeals Case No. 4010, dated April 4, 1990, a copy of which is in the file, was examined. The Applicant in that case requested permission to construct a carport with dimensions of 13 feet by 32 feet, which required a variance to the 10 foot single side yard setback requirement and the 30 foot combined side yard setback requirement. The Applicants in that case argued that denial would create a hardship as they were experiencing a water problem in their basement and a radon problem. The Applicants did not believe there would be an adverse impact to the neighborhood. No testimony was given in opposition in Case No. 4010 and, in fact, there was little additional testimony given the Applicants, although the Applicants also stated their belief that their property is “exceptionally narrow”.

The Hearing Examiner in that case recommended approval, finding that the subject property is unique “. . . for the reasons stated. . .”, noting the Applicants’ attempt to alleviate a wetness problem which had caused above average radon problems.

It is noted, first of all, that the subject property is, indeed, very similar in size to that of the Applicants in Case No. 4010. The lot in Case No. 4010 has very similar dimensions to that of the subject property; the house appears to be similar; the house appears to be located in roughly the same position on the lot. (See aerial photographs and drawings in the file.) The Applicants in Case No. 4010 also expressed drainage issues as a reason for building the carport. Mr. and Mrs. Hasselbarth are correct – their described situation is similar to the situation of the Applicants in Case No. 4010.

The Board of Appeals has no power to grant a variance to one party simply because another party was granted a variance based on a similar set of circumstances. The standard to be applied in each and every case is the same. Is there some unusual or unique facet of the subject property which causes the Applicants some impact, a hardship or difficulty? If it is, and if relief can be fashioned in order to accommodate the Applicants and at the same time cause no impact to others, then the relief can be granted.

However, quite obviously, the Applicants’ property is not impacted differently than other properties. In fact, the very existence of Case No. 4010 is illustrative of the finding that other people in the area have expressed similar problems with drainage. Certainly, there are no other articulated characteristics of the subject property which make it unique from any other. Indeed, it is almost identical to other lots in Fox Bow.

Case No. 5533 – Herbert & Carol Hasselbarth

What is particularly difficult for the Applicants to overcome, however, is the clear observation that the drainage problem about which the Applicants complain, can be solved in many other ways, the most easily of which would be to construct the black top paving up to the side of the house, between the house and the existing paved driveway, a distance of only a few feet. Indeed, the Applicants expressed their intention to do just that. Quite obviously, the drainage problem in that area would be cured by a slight amount of additional paving, blacktop, or perhaps some very minor grading. It should also be noted that, while the Applicants did introduce photographs showing some water coursing through their property, it did not appear to be at the foundation of the house, nor did it appear to be particularly extreme or unusual.

The Applicants live on a relatively small lot, and no doubt genuinely wish to improve their property. However, they are not allowed to construct a carport as desired without a variance. They cannot articulate a rational reason for the granting of a variance. The creation of a carport will not achieve the goal they seek. An open sided carport, constructed over an existing paved driveway, will do absolutely nothing to help divert water run off which comes from surrounding properties. Perhaps some regrading, and perhaps the installation of some small amount of additional blacktop as proposed by the Applicants, will correct the problem. Clearly, however, the creation of a carport will not.

The Applicants have the burden of persuasion. They must show, by some credible evidence and testimony, that what they wish to do can fairly meet the requirements of the variance standard. Despite their best efforts they simply cannot make that showing.

CONCLUSION:

For the above reasons it, is recommended that the requested variance be denied.

Date: June 26, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 26, 2006.